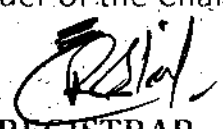


Form-A

FORM OF ORDER SHEET

Court of _____

Restoration Application No. 1762/2024

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 11.11.2024 | <p>The application for restoration of Service Appeal No. 1794/2023 received today by registered post through Abdul Aziz Khan Tanoli Advocate. It is fixed for hearing before touring Single Bench at A.Abad on 25.11.2024. Counsel for the appellant has been informed telephonically.</p> <p style="text-align: right;">By order of the Chairman  REGISTRAR</p> |

BEFORE SERVICE PRESIDENTIAL KPK RESTORATION

Ijaz Ahmed. v/s

Provincial Police Officer

Restoration Application

① One set of original copy.

② Copies 7 set of copies

ABDUL KHAN TANOLI ADVOCATE
OFFICE NO 80 GINNAH LAWYERS PLAZA KETTERY RD
03118775478.

① Abdul Khan Tanoli

**BEFORE THE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

R.A - no. 1362/24 CM NO. _____

Ijaz Ahmed, S/O Abdul Ghaffar Khan, R/O Kohsar Town, Nawansher, Tehsil and District Abbottabad

.....Petitioner

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa and others

.....Respondents

APPLICATION FOR RESTORATION

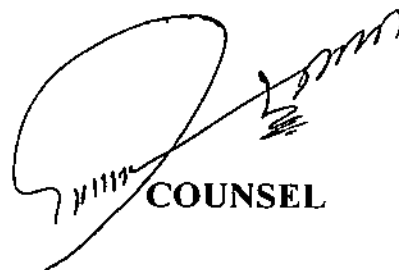
INDEX

| S.# | Description | Page no | Annexure |
|-----|--|---------|----------|
| 1 | Application for Restoration along with Affidavit | 1-2 | |
| 2 | Application for Condonation of Delay | 3-4 | |
| 3 | Copy of Appeal | 5-28 | "A" |
| 4 | Copy of Order Sheet dated 28.02.2024 | 29 | "B" |
| 5 | Copy of Order Sheets | 30-32 | "C" |
| 6 | Wakalatnama | 33 | |
| | | | |
| | | | |
| | | | |


PETITIONER

Dated: 24-2-2024

Through


COUNSEL

①

BEFORE THE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

R.A. NO. 1352

CM NO. _____

IN

Service Appeal No.1794/2023

Ijaz Ahmed, S/O Abdul Ghaffar Khan, R/O kohsar Town, Nawansher, Tehsil and District Abbottabad,

.....Petitioner

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Additional IGP Establishment for Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Additional IGP Headquarter for Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. Regional Police Officer Hazara Region, Abbottabad.

.....Respondents

APPLICATION FOR RESTORATION OF SERVICE APPEAL
NO. 1794/2023 TITLED AS "IJAZ AHMED VS
PROVINCIAL POLICE OFFICER AND OTHERS"

Respectfully Sheweth,

The Appellant / Applicant named above submits this application praying to state as follow:-

1. That the titled Service Appeal was pending before this Learned Services Tribunal.(Copy of the appeal is attached as Annexure "A")
2. That title Appeal was fixed for hearing on 28.05.2024 before this Hon'ble Tribunal and the said date was fixed through order sheet dated 28.02.2024 (Copy of order sheet dated 28.02.2024 is attached as Annexure "B").
3. That on 28.05.2024 the Government of Pakistan declared as national Holiday, therefore, this Hon'ble Tribunal was closed on the said date.
4. That the Appellant / Applicant and his Counsel tried to get the information regarding the next hearing of his Service Appeal but failed to get the required details of his case and where instructed / informed to visit Services Tribunal at Peshawar.
5. That the Appellant / Applicant and his Counsel after having visited Services Tribunal at Peshawar on 28.10.2024 came to know that the case of the Appellant / Applicant has been dismissed due to non - appearance on

24.07.2024 by this Hon'ble Tribunal. (Copy of order sheets are attached as annexure "C")

- 6. That the non-appearance of the Appellant / Applicant and his Counsel on date fixed was not willful rather it was not in the knowledge of the Appellant / Applicant and his Counsel.
- 7. That valuable rights of applicant are involved in title appeal.
- 8. That from the date of knowledge and what has been mentioned above the present application is well within time, however, the Application for Condonation of Delay is being filed along with instant restoration application.

PRAYER

It is therefore, most respectfully and humbly, prayed that by accepting Instant Restoration Application the Services Appeal No. 1794/2023 Titled as Ijaz Ahmed vs Provincial Police Officer and others, may graciously be restored to its original position in the best interest of justice.

Ijaz Ahmed
APPLICANT,

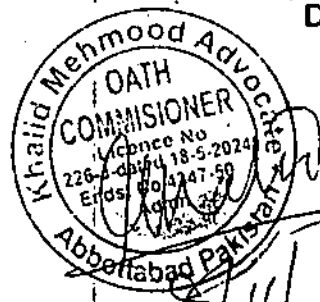
Through,
[Signature]
COUNSEL

Date: 8-11-24

AFFIDAVIT.

It is on oath stated that the contents of instant application are true and nothing has been concealed from this Honorable Tribunal.

[Signature]
DEPONENT



[Signature]
08/11/2024

(3)

**BEFORE THE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

CM NO. _____

Ijaz Ahmed, S/O Abdul Ghaffar Khan, R/O kohsar Town, Nawansher, Tehsil and District
Abbottabad

.....Petitioner

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa and others

.....Respondents

APPLICATION FOR RESTORATION

**APPLICATION FOR CONDONATION OF DELAY, IF ANY, IN
FILLING OF TITLED APPLICATION**

Respectfully Sheweth,

1. That, the titled restoration application is being filed before this Hon'ble Tribunal and the instant application be considered as part and parcel of said application.
2. That, the applicant continued to pursue his matter with diligence and always kept his cause alive with the assurance to get relief.
3. That, it is within the power of this Honorable Tribunal to condone any delay if so caused.
4. That, any delay if appears, was neither within the knowledge of applicant nor is intentional and therefore, is beyond the perception and control of the applicant.
5. That, the instant application is part and parcel of the restoration application and sufficient cause has been explained in the restoration application which may kindly be considered as ground of the instant application.

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6. That, other legal and factual points will be agitated before this Hon'ble tribunal with permission of this Hon'ble Tribunal.

It is, therefore, humbly prayed that on acceptance of instant application, any delay if so caused, may graciously be condoned and the case of the applicant be decided on merits.

Ijaz Ahmed
...PETITIONER

Through

[Signature]
Counsel

Dated: 08-11-2024

AFFIDAVIT:

I, **Ijaz Ahmed, S/O Abdul Ghaffar Khan**, do hereby solemnly affirm and declare on Oath that the contents of instant **application** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



Ijaz Ahmed
DEPONENT

[Signature]

5

Annepure "A"



BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

Service Appeal No. 1794/2023

Writ Petition No. 1222-A/2022

Ijaz Ahmed son of Abdul Ghafar Khan, Presently serving as acting Superintendent of Police Investigation at Torghar.

...PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar.
2. Secretary Home and Tribal Affairs Khyber Pakhtunkhwa, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
4. Additional IGP Establishment for Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
5. Additional IGP Headquarters for Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
6. Regional Police Officer Hazara Region, Abbottabad.
7. Mr. Falak Niaz at serial No. 13 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 26 of Final Seniority List No. 1594/SE-I dated 05/08/2022.
8. Mr. Tajamul Khan at serial No. 14 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 27 of Seniority List No. 1594/SE-I dated 05/08/2022.
9. Mr. Tariq Habib at serial No. 15 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 28 of Seniority List No. 1594/SE-I dated 05/08/2022.
10. Mr. Nisar Ahmad at serial No. 16 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 29 of Seniority List No. 1594/SE-I dated 05/08/2022.
11. Mr. Tariq Iqbal at serial No. 17 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 30 of Seniority List No. 1594/SE-I dated 05/08/2022.
12. Mr. Aslam Nawaz at serial No. 18 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 31 of Seniority List No. 1594/SE-I dated 05/08/2022.
13. Mr. Ishtiaq Ahmad at serial No. 19 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 32 of Seniority List No. 1594/SE-I dated 05/08/2022.

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EXAMINER
Khyber Pakhtunkhwa
High Court
Peshawar
28-10-21

ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

14. Mr. Iftikhar Shah at serial No. 20 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 35 of Seniority List No. 1594/SE-I dated 05/08/2022.
15. Mr. Noor Jamal at serial No. 21 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 36 of Seniority List No. 1594/SE-I dated 05/08/2022.
16. Mr. Syed Mukhtiar Shah at serial No. 22 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 37 of Seniority List No. 1594/SE-I dated 05/08/2022.
17. Mr. Nazir Ahmad at serial No. 23 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 38 of Seniority List No. 1594/SE-I dated 05/08/2022.
18. Mr. Saeed Akhtar at serial No. 24 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 39 of Seniority List No. 1594/SE-I dated 05/08/2022.
19. Mr. Muhammad Ishtiaq at serial No. 25 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 41 of Seniority List No. 1594/SE-I dated 05/08/2022.
20. Mr. Muhammad Mahroof at serial No. 26 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 42 of Seniority List No. 1594/SE-I dated 05/08/2022.
21. Mr. Muhammad Ayaz at serial No. 27 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 43 of Seniority List No. 1594/SE-I dated 05/08/2022.
22. Mr. Muhammad Jameel Akhtar at serial No. 28 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 44 of Seniority List No. 1594/SE-I dated 05/08/2022.
23. Mr. Abdul Hai at serial No. 29 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 45 of Seniority List No. 1594/SE-I dated 05/08/2022.
24. Syed Inayat Ali Shah at serial No. 30 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 46 of Seniority List No. 1594/SE-I dated 05/08/2022.
25. Mr. Niaz Muhammad at serial No. 31 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 47 of Seniority List No. 1594/SE-I dated 05/08/2022.
26. Mr. Hameedullah at serial No. 32 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 48 of Seniority List No. 1594/SE-I dated 05/08/2022.
27. Mr. Sajjad Ahmad at serial No. 33 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 49 of Seniority List No. 1594/SE-I dated 05/08/2022.
28. Mr. Shah Hussain at serial No. 34 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 50 of Seniority List No. 1594/SE-I dated 05/08/2022.
29. Mr. Nazir Khan at serial No. 35 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 51 of Seniority List No. 1594/SE-I dated 05/08/2022.

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SHAH
Mukhtiar
Shah

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PESHAWAR HIGH COURT
ABBOTTABAD BENCH

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30. Mr. Sajjad Ahmad Sahibzada at serial No. 36 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 52 of Seniority List No. 1594/SE-I dated 05/08/2022.
 31. Mr. Muzamil Shah at serial No. 37 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 53 of Seniority List No. 1594/SE-I dated 05/08/2022.
 32. Mr. Mushtaq Ahmad at serial No. 38 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 54 of Seniority List No. 1594/SE-I dated 05/08/2022.
 33. Mr. Shaukat Ali at serial No. 39 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 55 of Seniority List No. 1594/SE-I dated 05/08/2022.
 34. Mr. Abdul Samad at serial No. 40 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 56 of Seniority List No. 1594/SE-I dated 05/08/2022.
 35. Mr. Muhammad Khalid at serial No. 41 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 57 of Seniority List No. 1594/SE-I dated 05/08/2022.
 36. Mr. Zia Hassan at serial No. 42 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 58 of Seniority List No. 1594/SE-I dated 05/08/2022.
 37. Mr. Shafiullah at serial No. 43 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 & at serial No. 60 of Seniority List No. 1594/SE-I dated 05/08/2022.
 38. Mr. Sohail Afzal at serial No. 44 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022.
 39. Mr. Mir Faraz at serial No. 45 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022.
 40. Mr. Muhammad Asif at serial No. 46 of Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022.
- (Respondents No. 7 to 40 be served through respondent No. 3)

...RESPONDENTS

ATTESTED

WITNESSES
M. H. KHAN
M. H. KHAN
M. H. KHAN

WRIT PETITION UNDER ARTICLE 199 OF
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN, 1973 SEEKING DECLARATION/
DIRECTION TO THE EFFECT THAT THE
NOTIFICATION NO. SO(E-I)E&AD/2-4/2022 DATED

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ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
PESHAWAR
27/9/22

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05/09/2022 ISSUED BY DEPARTMENTAL SELECTION BOARD/ APPROVED BY COMPETENT AUTHORITY IS APPARENTLY ILLEGAL, UNLAWFUL, ARBITRARY, BASED ON MALAFIDE, PERVERSE, VOID-AB-INITIO, CONTEMPTUOUS, AGAINST THE NORMS OF JUSTICE AND SHEER VIOLATION OF PROVISION OF CONSTITUTION IBID AND AGAINST THE DECISION MADE BY LARGER BENCH OF THIS HONOURABLE COURT IN WRIT PETITION NO. 684-A/2021 IN WHICH THIS HONOURABLE COURT WAS PLEASED TO DIRECT THE PROVINCIAL GOVERNMENT OF KPK, "FIRSTLY TO CLARIFY ITS POSITION WHETHER IT WANTS TO CONTINUE WITH THE MATTER OF AWARDING ACCELERATED POSITIONS TO MEMBERS OF ITS POLICE FORCE IN LINE WITH THE KHYBER PAKHTUNKHWA VALIDATION OF STANDING ORDER ACT 2005, PREVAILING POLICE RULES AND KHYBER PAKHTUNKHWA POLICE ACT 2017 OR NOT AND THEN DECIDE THE ISSUE RAISED IN THE PETITIONS ACCORDINGLY BUT TILL SUCH POLICY IS STREAM LINED, NO ADVERSE ACTION SHALL BE TAKEN AGAINST THE PETITIONERS", THE RESPONDENTS WITHOUT DISCONTINUING THE

TESTED

[Handwritten Signature]
 ADDITIONAL REGISTRAR
 PESHAWAR HIGH COURT
 ABBOTTABAD BENCH

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 PESHAWAR HIGH COURT
 ABBOTTABAD BENCH
[Handwritten Signature]

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POLICY OF CADETSHIP/ ACCELERATED PROMOTION AND DESPITE OF ISSUING FINAL SENIORITY LIST OF DSSP (BS-17) OF KPK POLICE VIDE SENIORITY LIST NO. 1594/SE-I DATED 05/08/2022, THE RESPONDENT DEPARTMENT DID NOT PROMOTE THE PETITIONER ON THE BASIS OF HIS SENIORITY CUM FITNESS TO THE RANK OF SP (BS-18) AND PROMOTED RESPONDENTS NO. 7 TO 40 DESPITE BEING JUNIORS TO THE PETITIONER AS PER FINAL SENIORITY LIST MENTIONED ABOVE. THE ACTS OF RESPONDENTS CONCERNED MAY GRACIOUSLY BE ORDER TO BE DECLARED NULL AND VOID BEING VIOLATIVE OF DECISION OF THIS HONOURABLE COURT AND AGAINST THE SENIORITY LIST AND THE PETITIONER BE PROMOTED BEING QUALIFIED BY ALL MEANS TO THE RANK OF SP (BS-18) WITH EFFECT FROM THE DATE OF ISSUING OF IMPUGNED NOTIFICATION. ANY OTHER RELIEF WHICH THIS HONOURABLE COURT DEEMS APPROPRIATE IN THE FACTS AND CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE PETITIONER.

ATTESTED

[Signature]
 EXAMINER
 PESHAWAR HIGH COURT
 ARBODIEN

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 ADDITIONAL REGISTRAR
 PESHAWAR HIGH COURT
 ARBODIEN
[Signature]

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Respectfully Sheweth: -

The brief facts leading to the present writ petition are as under;

1. That the petitioner joined the Police Department as constable and having unblemished service record to the entire satisfaction of high officers promoted upto the rank of Sub-Inspector.
2. That the petitioner was promoted as Inspector on 19/07/2007 vide Notification No. 16568. Copy of Notification is attached as Annexure "A".
3. That the petitioner was confirmed as Inspector vide Notification No. 4178 dated 11/02/2014 alongwith his other colleagues with effect from 28/01/2010. Copy of Notification is attached as Annexure "B".
4. That the petitioner was promoted as DSP vide Notification No. 1092 dated 12.09.2014 During service the petitioner was assigned different duties and proved his commitments with honesty and full

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PESHAWAR HIGH COURT
PESHAWAR

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dedication. The service record of the petitioner is self explanatory in this respect.

5. That the respondent No. 4 issued final seniority list of DSsP BS-17 of Khyber Pakhtunkhwa Police No. 1594/SE-I dated 05/08/2022 in which the petitioner is placed at serial No. 23. Copy of final seniority list is attached as Annexure "C".
6. That as per SOPs and the internal correspondence of the department, the department called the meeting of departmental selection board to examine the promotion cases of DSsP (BS-17) to the rank of SsP (BS-18) vide Notification No. CPO/CPB/DSB/252 dated 18/08/2022. Copy of Notification dated 18/08/2022 is attached as Annexure "D".
7. That upon the recommendation of departmental selection board in its meeting held on 19/08/2022 and subsequent approval of the competent authority a list of promotees was issued vide Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022, in which officers mentioned at serial

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


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HOTTAR BENCH

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No. 13 to 46 Juniors to the petitioner were promoted and vide Para No. 3 of the said impugned Notification their promotions were made subject to the decision of superior judiciary and cabinet regarding the issue of "out of turn promotion" and absorption in Khyber Pakhtunkhwa Police from other provinces/department. Copy of Notification dated 05/09/2022 is attached as Annexure "E".

8. That the petitioner upon information of meeting of the Department Promotion Board approached the department for redressal of his grievance by filing representation but no such reply/ action has so far been taken by the department upon presentation of the petitioner. Copy of representation is annexed as Annexure "F".
9. That feeling aggrieved by the Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 the petitioner approaches this Honourable Court through the instant writ petition on the following amongst other grounds:-

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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PESHAWAR HIGH COURT
ABBOTABAD BENCH
M 91

GROUNDS:-

- a. That the petitioner gained the accelerated promotion and obtained the present position through sheer hard work, labour and ability. As regards the benefits acquired by the petitioner through the incentive policy, it was only the opportunity offered to every one equally. Petitioner happened to best utilized the opportunity, thus, qualified for accelerated promotion having placed himself on higher pedestal of fitness irrespective of position on seniority list, amongst those officers who are junior to the petitioner as per final seniority list.

- b. That the fundamental question out of the situation is to see whether petitioner should be penalized for his better performance just because the competent authorities continued acting in the light of the incentive policy. Law does not envisage punitive action against one of lapses of another. The present position of the petitioner reveals question of

ATTESTED

[Signature]
 PESHAWAR
 District Registrar
 Peshawar

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 PESHAWAR/HIGHT COURT
 PESHAWAR BENCH
[Signature]

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reverted rights which cannot be taken away irrespective of due course followed therefore. Hence the impugned Notification dated 05/09/2022 is untenable at law and facts.

c. That the impugned notification ex-facie indicates adoption of easy path to correct an error at higher level. As such the impugned notification being untenable at law and facts and is liable to be set aside and unimplementable.

d. That being senior in the seniority list from the respondents No. 7 to 40, the petitioner was entitled to be promoted from the rank of DSP (BS-17) to the rank of S:P (BS-18) on the basis of seniority cum fitness criteria, but the respondents did not comply with the requirements of law and policy, which is ineffective upon the rights of the petitioner, hence, impugned notification is liable to be set aside.

ATTESTED

[Signature]
Additional Registrar
Peshawar High Court
Abbottabad Bench

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ABBOTTABAD BENCH
[Signature]

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e. That the larger bench of Honourable Peshawar High Court in writ petition No. 684-A/2021 in its order announced on 24/03/2022 directed the government "firstly to clarify its position whether it wants to continue with the matter of awarding accelerated positions to members of its police force in line with the Khyber Pakhtunkhwa validation of standing order Act 2005, prevailing Police Rules and Khyber Pakhtunkhwa Police Act 2017 or not and then decide the issue raised in the petitions accordingly but till such policy is stream lined, no adverse action shall be taken against the petitioners" but the said directions has not still been implemented and proceeded by the respondent department and the Government.

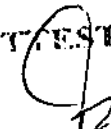
f. That in the light of said judgment of larger bench of Honourable Peshawar High Court the policy i.e. standing order No. 11 of 1987 and validation of standing order Act of 2005, alongwith all other relevant provisions

NOTED
JUDGE
KHYBER PAKHTUNKHWA
HIGH COURT
PESHAWAR


ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ARBORETTABAD BENCH
M/91

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of law through which the petitioner alongwith others got their present positions in the department, are still holding the field and the government has not declared its policy in respect of those enactments in the light of judgment dated 24/03/2022, so the department by not promoting the petitioner on the basis of his seniority cum fitness criteria and by promoting the officers at serial No. 13 to 46 of the impugned notification who are juniors to the petitioner has acted in discriminatory and contemptuous manner and on the basis of mala fide, hence the impugned notification is untenable in the eye of law. Copy of judgment announced on 24/03/2022 in writ petition No. 684-A/2021 by the larger bench of Honourable Peshawar High Court is annexed as Annexure "G".

ATTESTED

 REGISTRAR
 PESHAWAR HIGH COURT
 PESHAWAR

g. That the judgment of the Honourable Supreme Court of Pakistan reported as 2017 SCMR 206 which is made basis in the impugned Notification is distinguishable and

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 PESHAWAR HIGH COURT
 PESHAWAR


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not applicable to the case of the petitioner, because in that judgment the subject matter was of the officials who gained out of turn promotion under Section 8-A of Punjab Civil Servants Act 1974 and Section 9-A of Sindh Civil Servants Act 1973. It can be seen in that judgment that all the officials got out of turn promotion on the basis of police encounters or under sports policy, without any qualification/ courses/ examination, while the petitioners' promotion is justified due to the fact that certain qualification/ courses/ examination have been prescribed in the incentive policy in order to be qualified for such promotions.

h. That the official respondents were under obligation not to pass any adverse order against the petitioner in presence of Act of 2005 which merged the standing order in it and judgment of larger bench of this Honourable Court.

i. That as the contents of impugned notification would reveal that the official

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 [Signature]
 JUDGE

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 PESHAWAR HIGH COURT
 [Signature]

respondents are poised to revert the petitioner to far lower level which would subject him to irreparable loss and hardship. Therefore, restraining the respondents from acting upon the impugned notification would be in the better interest of justice.

- j. That no other alternate, efficacious and speedy remedy is available to the petitioner except the instant constitutional petition.
- k. That notice/ intimation of filing the instant writ petition against the respondents has duly been served upon the respondents through registered post. Copies of notice & receipt are attached as Annexure "H".
- l. That the valuable rights of the petitioner are involved in the matter.
- m. That the other points shall be agitated at the time of arguments with the permission of this Honourable Court.
- n. That court fee stamps worth Rs. 500/- is annexed with the petition.

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[Signature]

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PESHAWAR HIGH COURT
ABBOTTABAD BENCH
[Signature]

Under these circumstances, it is very respectfully prayed that on acceptance of instant writ petition, the impugned Notification No. SO(E-I)E&Ad/2-4/2022 dated 05/09/2022 may kindly be set aside and the respondents concerned be directed to promote the petitioner to the rank of S.P (BPS-18) w.e.f the date of promotion vide Notification dated 05/09/2022. Any other relief which this Honourable court deems appropriate in the facts and circumstances of the case may also be granted to the petitioner.

INTERIM RELIEF:

In the meanwhile, the operation of impugned Notification No. SO(E-I)E&Ad/2-4/2022 dated 05/09/2022 may kindly be suspended till final decision of tilted writ petition.

ATTESTED

[Signature]
JUDGE
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

...PETITIONER

Dated: 22/09/2022

Through

[Signature]

(FARAZ AHMED)

Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

[Signature]

...PETITIONER

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
[Signature]

20

BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

Writ Petition No. _____ -A/2022

Ijaz Ahmed son of Abdul Ghafar Khan, Presently serving as acting Superintendent of Police Investigation at Torghar.

...PETITIONER

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar & others.

...RESPONDENTS

WRIT PETITION

AFFIDAVIT

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
28-10-24

I, *Ijaz Ahmed son of Abdul Ghafar Khan, Presently serving as acting Superintendent of Police Investigation at Torghar*, do hereby declare on oath that the contents of foregoing writ petition are true and correct to the best of my knowledge and belief and that nothing has been suppressed form this Honourable Court.

13503-0650939-5

Ijaz Ahmed
DEPONENT

Case No. 2824/976 Receipt No: 476

Certified that the above was verified on Solemn affirmation Yes before me on this

21 day of Oct 2002
Ijaz Ahmed
who is personally known to me

Oath Commissioner
(Additional Registrar)
Peshawar Bench of the Peshawar High Court

21/10/24

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
Fazal

21

BEFORE THE HONOURABLE KPK SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Appeal No. 1794-A/2023

Ijaz Ahmed son of Abdul Ghafar Khan, Presently serving as acting Superintendent of Police Investigation at Torghar.

...APPELLANT

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Additional IGP Establishment for Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
3. Additional IGP Headquarters for Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. Regional Police Officer Hazara Region, Abbottabad.

...RESPONDENTS

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 FOR SETTING-ASIDE OF NOTIFICATION NO. SO(E-D)E&AD/2-4/2022 DATED 05/09/2022 ISSUED BY DEPARTMENTAL SELECTION BOARD/ APPROVED BY COMPETENT AUTHORITY IS APPARENTLY ILLEGAL, UNLAWFUL, ARBITRARY, BASED ON MALAFIDE, PERVERSE, VOID-AB-INITIO, CONTEMPTUOUS, AGAINST THE NORMS OF JUSTICE AND SHEER VIOLATION OF PROVISION OF CONSTITUTION IBID AND AGAINST THE DECISION MADE BY LARGER BENCH OF HONOURABLE PESHAWAR HIGH COURT IN WRIT PETITION NO. 684-A/2021 IN WHICH THE HONOURABLE PESHAWAR HIGH COURT WAS PLEASED TO DIRECT THE PROVINCIAL GOVERNMENT OF KPK. "FIRSTLY TO CLARIFY ITS POSITION WHETHER IT WANTS TO CONTINUE WITH THE MATTER OF AWARDING ACCELERATED POSITIONS TO MEMBERS OF ITS

Attested
8-11-24

Abdul Aziz Khan Tanoli
Advocate
District Bar Abbottabad

POLICE FORCE IN LINE WITH THE KHYBER PAKHTUNKHWA VALIDATION OF STANDING ORDER ACT 2005, PREVAILING POLICE RULES AND KHYBER PAKHTUNKHWA POLICE ACT 2017 OR NOT AND THEN DECIDE THE ISSUE RAISED IN THE PETITIONS ACCORDINGLY BUT TILL SUCH POLICY IS STREAM LINED, NO ADVERSE ACTION SHALL BE TAKEN AGAINST THE APPELLANTS". THE RESPONDENTS WITHOUT DISCONTINUING THE POLICY OF CADETSHIP/ ACCELERATED PROMOTION AND DESPITE OF ISSUING FINAL SENIORITY LIST OF DSSP (BS-17) OF KPK POLICE VIDE SENIORITY LIST NO. 1594/SE-I DATED 05/08/2022, THE RESPONDENT DEPARTMENT DID NOT PROMOTE THE APPELLANT ON THE BASIS OF HIS SENIORITY CUM FITNESS TO THE RANK OF SP (BS-18) AND PROMOTED OTHER OFFICIALS DESPITE BEING JUNIORS TO THE APPELLANT AS PER FINAL SENIORITY LIST MENTIONED ABOVE. THE ACTS OF RESPONDENTS CONCERNED MAY GRACIOUSLY BE ORDER TO BE DECLARED NULL AND VOID BEING VIOLATIVE OF DECISION OF THE HONOURABLE PESHAWAR HIGH COURT AND AGAINST THE SENIORITY LIST AND THE APPELLANT BE PROMOTED BEING QUALIFIED BY ALL MEANS TO THE RANK OF SP (BS-18) WITH EFFECT FROM THE DATE OF ISSUING OF IMPUGNED NOTIFICATION. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS APPROPRIATE IN THE FACTS AND CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

ATTESTED

[Signature]
 Advocate
 District: Peshawar
 8/11/2024

Respectfully Sheweth: -

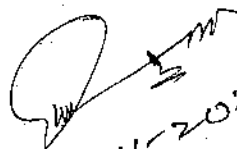
The brief facts leading to the present writ petition are as under;

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1. That the instant appeal is being filed in its proper format under Section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 in continuation of writ petition 1222-A/2022 filed earlier.
2. That the appellant joined the Police Department as constable and having unblemished service record to the entire satisfaction of high officers promoted upto the rank of Sub-Inspector.
3. That the appellant was promoted as Inspector on 19/07/2007 vide Notification No. 16568. Copy of Notification is already attached as Annexure "A".
4. That the appellant was confirmed as Inspector vide Notification No. 4178 dated 11/02/2014 alongwith his other colleagues with effect from 28/01/2010. Copy of Notification is already attached as Annexure "B".
5. That the appellant was promoted as DSP vide Notification No. 1092 dated 12.09.2014 During service the appellant was assigned different duties and proved his commitments with honesty and full dedication. The service record of the appellant is self explanatory in this respect.
6. That the respondent No. 4 issued final seniority list of DSsP BS-17 of Khyber Pakhtunkhwa Police No. 1594/SE-I dated 05/08/2022 in which the appellant is placed at serial No. 23. Copy of final seniority list is already attached as Annexure "C".

7. That as per SOPs and the internal correspondence of the department, the department called the meeting of departmental selection board to examine the promotion cases of DSsP (BS-17) to the rank of SsP (BS-18) vide Notification No. CPO/CPB/DSB/252 dated

ATTESTED


8-11-2024.

Abdul Aziz Khan Tanoli
Advocate
District Bar Abbottabad

18/08/2022. Copy of Notification dated 18/08/2022 is already attached as Annexure "D".

8. That upon the recommendation of departmental selection board in its meeting held on 19/08/2022 and subsequent approval of the competent authority a list of promotees was issued vide Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022, in which officers mentioned at serial No. 13 to 46 Juniors to the appellant were promoted and vide Para No. 3 of the said impugned Notification their promotions were made subject to the decision of superior judiciary and cabinet regarding the issue of "out of turn promotion" and absorption in Khyber Pakhtunkhwa Police from other provinces/ department. Copy of Notification dated 05/09/2022 is already attached as Annexure "E".
9. That the appellant upon information of meeting of the Department Promotion Board approached the department for redressal of his grievance by filing representation but no such reply/ action has so far been taken by the department upon presentation of the appellant. Copy of representation is already annexed as Annexure "F".
10. That feeling aggrieved by the Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 the appellant approaches this Honourable Court through the instant writ petition on the following amongst other grounds:-

GROUND:-

- a. That the appellant gained the accelerated promotion and obtained the present position through sheer hard work, labour and ability. As regards the benefits acquired by the appellant through the incentive policy, it was only the

ATTESTED

[Signature]
 2024
 Advocate
 District Abbottabad

opportunity offered to every one equally. Appellant happened to best utilized the opportunity, thus, qualified for accelerated promotion having placed himself on higher pedestal of fitness irrespective of position on seniority list, amongst those officers who are junior to the appellant as per final seniority list.

- b. That the fundamental question out of the situation is to see whether appellant should be penalized for his better performance just because the competent authorities continued acting in the light of the incentive policy. Law does not envisage punitive action against one of lapses of another. The present position of the appellant reveals question of reverted rights which cannot be taken away irrespective of due course followed therefore. Hence the impugned Notification dated 05/09/2022 is untenable at law and facts.
- c. That the impugned notification ex-facie indicates adoption of easy path to correct an error at higher level. As such the impugned notification being untenable at law and facts and is liable to be set aside and unimplementable.
- d. That being senior in the seniority list from the respondents No. 7 to 40, the appellant was entitled to be promoted from the rank of DSP (BS-17) to the rank of S.P (BS-18) on the basis of seniority cum fitness criteria, but the respondents did not comply with the requirements of law and policy, which is ineffective upon the rights of the appellant.

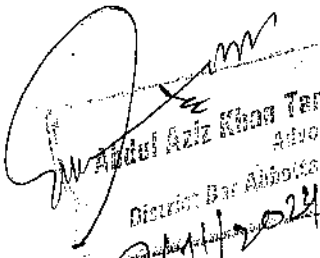
ATTESTED


Aziz Khan Tanoli
Advocate
Dist Bar Abbottabad
8/11/2022

hence, impugned notification is liable to be set aside.

- e. That the larger bench of Honourable Peshawar High Court in writ petition No. 684-A/2021 in its order announced on 24/03/2022 directed the government "firstly to clarify its position whether it wants to continue with the matter of awarding accelerated positions to members of its police force in line with the Khyber Pakhtunkhwa validation of standing order Act 2005, prevailing Police Rules and Khyber Pakhtunkhwa Police Act 2017 or not and then decide the issue raised in the petitions accordingly but till such policy is stream lined, no adverse action shall be taken against the appellants" but the said directions has not still been implemented and proceeded by the respondent department and the Government.
- f. That in the light of said judgment of larger bench of Honourable Peshawar High Court the policy i.e. standing order No. 11 of 1987 and validation of standing order Act of 2005, alongwith all other relevant provisions of law through which the appellant alongwith others got their present positions in the department, are still holding the field and the government has not declared its policy in respect of those enactments in the light of judgment dated 24/03/2022, so the department by not promoting the appellant on the basis of his seniority cum fitness criteria and by promoting the officers at serial No. 13 to 46 of the impugned notification who are juniors to the appellant has acted in discriminatory and contemptuous manner and

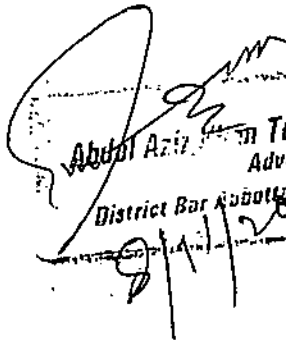
ATTESTED


Abdul Aziz Khan Terani
Advocate
District Bar Abbottabad
21/11/2024

on the basis of malafide, hence the impugned notification is untenable in the eye of law. Copy of judgment announced on 24/03/2022 in writ petition No. 684-A/2021 by the larger bench of Honourable Peshawar High Court is already annexed as Annexure "G".

- g. That the judgment of the Honourable Supreme Court of Pakistan reported as 2017 SCMR 206 which is made basis in the impugned Notification is distinguishable and not applicable to the case of the appellant, because in that judgment the subject matter was of the officials who gained out of turn promotion under Section 8-A of Punjab Civil Servants Act 1974 and Section 9-A of Sindh Civil Servants Act 1973. It can be seen in that judgment that all the officials got out of turn promotion on the basis of police encounters or under sports policy, without any qualification/ courses/ examination, while the appellants' promotion is justified due to the fact that certain qualification/ courses/ examination have been prescribed in the incentive policy in order to be qualified for such promotions.
- h. That the official respondents were under obligation not to pass any adverse order against the appellant in presence of Act of 2005 which merged the standing order in it and judgment of larger bench of this Honourable Peshawar High Court.
- i. That as the contents of impugned notification would reveal that the official respondents' are poised to revert the appellant to far lower level

ATTESTED


Abdul Aziz Tanoli
Advocate
District Bar Abbottabad
9/11/2021

which would subject him to irreparable loss and hardship. Therefore, restraining the respondents from acting upon the impugned notification would be in the better interest of justice.

- j. That the valuable rights of the appellant are involved in the matter.
- k. That the other points shall be agitated at the time of arguments with the permission of this Honourable Tribunal.

Under these circumstances, it is very respectfully prayed that on acceptance of instant appeal, the impugned Notification No. SO(E-I)E&Ad/2-4/2022 dated 05/09/2022 may kindly be set aside and the respondents concerned be directed to promote the appellant to the rank of S.P (BPS-18) w.e.f the date of promotion vide Notification dated 05/09/2022. Any other relief which this Honourable Tribunal deems appropriate in the facts and circumstances of the case may also be granted to the appellant.

INTERIM RELIEF:

In the meanwhile, the operation of impugned Notification No. SO(E-I)E&Ad/2-4/2022 dated 05/09/2022 may kindly be suspended till final decision of tilted appeal.

ATTESTED

[Signature]

Abdul Aziz Khan Tanoli
Advocate
District Bar Abbottabad

[Signature]

Dated: _____/2022

Through

[Signature]
...APPELLANT

(FARAZ AHMED)
Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

[Signature]...APPELLANT

29

Annexure "B" D



28th Feb, 2024

1. Learned counsel for the appellant and Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. The reason for not granting promotion was stated by the respondents in Paragraph-7 of the reply to be pendency of some cases before various benches of the Peshawar High Court. Learned counsel for the appellant says that all such cases were decided, whereas, learned AAG says that some of the cases are still pending.

Be that as it may, we need to have copy of minutes before us to see the actual reason for not granting promotion to the appellant.

Learned AAG is directed to place on record the same within 15 days. To come up for arguments on 28.05.2024 before D.B at Camp

Court, Abbottabad. P.P given to the parties.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
28-10-24

Mutazem Shah

(Salah Ud Din)
Member (J)
Camp Court, A/Abad

(Kalim Arshad Khan)
Chairman
Camp Court, A/Abad

| | |
|---|----------------|
| Khyber Pakhtunkhwa Service Tribunal, Peshawar | Date: 28-10-24 |
| Application No. 349 | 2008/m Ahmed |
| Name of Applicant | 3-P |
| Number of Words/Pages | 15/- |
| Copying Fee | 5/- |
| Urgent/Ordinary | 20/- |
| Total | 28/- |
| Name & Sign of Applicant | 28-10-24 |
| Date of Completion | 28-10-24 |
| Date of Delivery | 28-10-24 |

Annexure C-3



SA 1794/23


24th July, 2024


01. Nemo for the appellant. Mr. Arshad Azam, Assistant A.G for the respondents present.

02. Called several times, till rising of the court but nobody appeared on behalf of the appellant. The appeal is, therefore, dismissed in default. Consign.

03. Pronounced in open Court at Camp Court, Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of July, 2024.


Scanned
KPST Peshawar


(Farzana Pasaal)
Member (E)
Camp Court, A/Abad


(Rashida Bano)
Member (J)
Camp Court, A/Abad

Fazle Subhan PS

Certified to be true copy


FAZLE SUBHAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar
28-10-24

| Khyber Pakhtunkhwa Service Tribunal, Peshawar | |
|---|---------------|
| Application No. | 349 |
| Name of Applicant | Zeeshan Ahmed |
| Number of Words/Pages | 1-0 |
| Copying Fee | 5/- |
| Urgent/Ordinary | 5/- |
| Total | 10/- |
| Name & Sign of Copyist | Zeeshan |
| Date of Completion of Copy | 28-10-24 |
| Date of Delivery of Copy | 28-10-24 |

31



28th Sept, 2023

1. Learned counsel for the appellant present and heard.
2. The learned counsel for the appellant submits that respondents No. 1,2 and 7 to 40 were arrayed as respondents as an abandoned precaution whereas, because the appellant was voicing for indication of his rights, therefore, at present there was no need to implead the above respondents He requested for deletion of their names for the time being. Names respondents No. 1,2 and 7 to 40 are deleted from the panel of respondents. Office is directed to make necessary entry in the relevant register as well as memo of appeal.
3. While treating the writ petition as service appeal, the Hon'ble Peshawar High Court found that the comments have already been submitted and the case was ripe, therefore, it is admitted to full hearing. For the purpose of procuring service, notices be issued to the other side. The appellant is directed to deposit security fee within ten days. Respondents be summoned through TCS/LCS, the expenses of which be deposited by the appellant within three days. To come up for written reply/comments on 27.11.2023 before S.B at camp court Abbottabad. P.P given to the parties.

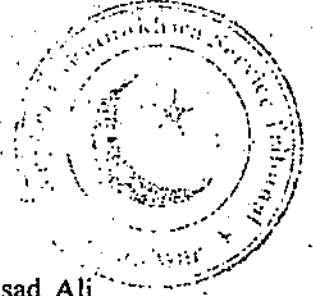
ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

28-10-23

Adnan Shah

(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

27th Nov. 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. The appellant had filed Writ Petition No.1222-A/2022 before the Peshawar High Court, Abbottabad Bench and the Peshawar High Court vide order dated 29.08.2023 transmitted the writ petition to this Tribunal with direction to treat it as service appeal and decide the same in accordance with law. As the appellant had initially filed writ petition, therefore, the learned counsel requests for submission of appeal on the format of the appeal in accordance with provisions of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Granted. He may do so a week before the next date. Copy of the same also be handed over to the learned AAG. Reply has been placed on file. To come up for arguments on 27.02.2024 before D.B at Camp Court, Abbottabad.

P.P given to the parties.

(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

Mutazem Shah

ATTESTED

 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar
 28-10-24

